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DEPARTMENT OF TRANSPORTATION
FEDERAL TRANSIT ADMINISTRATION
DOCKET NO. FTA – 2005-226571, RIN 2132-AA85
CHARTER SERVICE

Comments of *TransAmerica Travel LLC*

On the Notice of Proposed Rulemaking

FTA-2005-22657-107

April 4, 2007

Introduction

TransAmerica Travel LLC appreciates the opportunity to comment on Federal Transit Administration's ("FTA") Notice of Proposed Rulemaking ("NPRM") in the above titled proceeding. *TransAmerica Travel LLC* is a private motorcoach operator engaged in providing charter and tour transportation services in the United States. Moreover, our company is a member of the American Bus Association. As a member of ABA our company was informed of the negotiated rulemaking process from the beginning. As a private bus operator and a small business owner our company is aware of the significant damage done to our business and to the private bus industry due to illegal charter competition by publicly funded transit agencies. Thus, we are vitally interested in the NPRM.

Background

Pursuant to the direction contained in the Joint Explanatory Statement of the Committee of Conference, for Section 3023 (d), "Condition on Charter Bus Transportation Service" of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) of 2005, the Federal Transit Administration established a Committee (the Charter Bus Negotiated Rulemaking Advisory Committee (CBNRAC or Committee) to develop, through a negotiated rulemaking, recommendations for improving the regulation (49 U.S.C. Part 604) regarding unauthorized competition from recipients of Federal financial assistance for providing charter bus service to the public. The CBNRAC was composed of representatives and alternates from twenty-two (including the FTA) public and private organizations with significant interests in charter bus operations. Under the charter bus regulations, charter opportunities are committed to the private bus industry unless it is shown that there is not a willing and able private operator willing to perform the service. In that event, the charter opportunity is available to any bus operator, including a publicly funded transit agency.

Discussion

We want to make it clear that we are in favor of the majority of the provisions in the proposed rule. There are three crucial points with which we agree with the proposed rule and just one point with which we differ with the FTA's proposal. We would also like to thank the FTA Staff and the members of the Committee for the time and effort all put into developing the proposed rule. In our view, the proposed rule is a positive benefit to the private bus industry, the publicly funded transit agencies and the public at large.

The Definition of “Charter Service”

A crucial part of the negotiated rulemaking was the committee agreement to review and revise as necessary the regulatory terms within the charter bus regulation. One definition that requires revision is that of “charter service.” The FTA was able to use the extensive CBNRAC discussions and negotiations surrounding this term to arrive at a workable and sound definition.

The controversy on the charter definition centered on a particular category of transportation services provided to events held on an irregular basis. These events, such as flower shows, art festivals, golf tournaments and state fairs constitute a majority of the events for which private bus operators provide charter services. These events are also the subject of the majority of the illegal charter service complaints that members of the private bus industry have filed with the FTA.¹

The private bus industry believes this class of activities to be charter service because a third party event sponsor is usually involved through some type of contractual arrangement; a new, temporary route has to be created to transport the people to and from the event (as opposed to published, regular transit routes), and because the service is not continuous, that is, it lasts only for the duration of the event. The public transit agencies believe that such service is public transportation because it serves the community at large (through congestion mitigation and traffic control²) even though the transit agency may

¹ During the CBNRAC the representatives of the American Bus Association submitted and made a part of the docket in this proceeding, a binder containing a representative sample of complaints of illegal charter activities by publicly funded transit agencies. The complaints, over fifty in number were collected between 1999 and 2006. Reference to this submission will demonstrate that the overwhelming majority concerned events scheduled on an irregular basis which are considered charter under the existing regulation.

² It must be noted that private bus operators, whose equipment may take the equivalent of fifty cars off a city's streets and highways provides the same congestion mitigation and traffic control as a transit bus.

need to create new or modified routes on a temporary basis for the duration of the service.

In resolving this issue FTA proposes, based on agreement within the CBNRAC, that charter service has three components: One, transportation of a group of persons pursuant to a single contract with a third party; two, a fixed charge and three, an itinerary determined by someone other than the public transit agency³. Also the Committee believes it important that FTA provide examples of what is and what is not charter service. Therefore FTA's proposal will include three examples of charter service and what is not charter service.⁴ We agree with the FTA's proposed regulation as it offers clarity to the definition of charter service and provides for a better delineation as to what transportation services publicly funded transit agencies may legally perform.

Charter Complaint and Administrative Appeals Process

The FTA charter bus complaint and appeals process required revision in order to achieve consistent and timely decisions. As stated by FTA in the NPRM, "inconsistency in past charter decisions by FTA was attributed in part to region-based adjudication under the current rule."⁵ The CBNRAC agreed that the complaint process should be removed from the FTA Regional offices and complaints be filed with the FTA Office of the Chief Counsel. And we agree with the new complaint process. The new process will require additional information on the part of the complainant and should result in complaints with enough information to determine the violation of the charter regulations. The new

³ 72 Fed. Register 7534 (February 15, 2007).

⁴ FTA proposes that the follow transportation operations do not constitute charter service. One, adding equipment or days to an existing route. Two, extending service hours on an existing route. Three, demand-responsive service that is part of coordinated public transit human service transportation; and four, new or modified service that is open to the public where the recipient establishes and controls the route and the service continues from year to year. *Id.*

⁵ 72 Fed. Register 7532 (February 15, 2007)

process will also allow complaints to be filed by the ABA and other industry associations on behalf of complainants who may not want to, or have the ability to file, complaints on their own. In our view this refinement should result in an improved complaint process. Similarly, we agree on the new, and in our view, improved appeals process. Previously, the Administrator could only consider an appeal if the “appellant presents evidence that there are new matters of fact or points of law that were not available or not known during the investigation of the complaint.”⁶ The proposed rule allows an appeal so long as the appellant meets the relevant deadlines. In addition, the Administrator, on his or her own motion, may review an initial decision (made by a FTA headquarters official or by an Arbitrator) after hearing and ratification. Finally, the Committee consensus puts in place specific timeframes for the FTA to make decisions regarding complaints and appeals. An initial decision would have to be issued 110 days after the investigation is complete and a decision on an appeal would have to be made within 30 days.

In our view this new complaint and appeals process is a positive benefit of the negotiated rulemaking proceeding. The new process, in its entirety will provide for consistent decisions, a rational appeals process and a stronger and more sure footed time frame to final decisions on charter violation complaints.

Applicability of Charter Service Regulations

Since the CBNRAC could not reach consensus on whether the charter services regulations apply to private charter operators receiving federal funds via various FTA administered programs, we agree with the FTA determined that the requirements of the charter bus regulation do not apply to private charter operators that receive, directly or

⁶ 72 Fed. Register 7532 (February 15, 2007) quoting 49 C.F.R. 604.20(b).

indirectly, certain Federal financial assistance.⁷ We agree with the FTA that the receipt of federal funds “should not hinder a private operator’s ability to conduct its business.”⁸ We agree with FTA for two reasons. First, the charter bus regulation was designed to protect private bus operators from unfair competition by heavily subsidized public transit agencies. To subject private operators to the charter service regulations undermines the regulations. Second, the federal funds received by the private operators are typically small amounts of money granted largely to help private operators defray the cost of installing wheelchair lifts on private motorcoaches or subsidies given to extend transportation service to rural communities. It would undermine the ability of private operators to remain open and jeopardize the provision of transportation services to vulnerable communities if private operators had to choose between receiving any federal funds and being subject to the charter regulations meant to help the private industry not cripple it.

The Lack of a Cease and Desist Order Process

Our main disagreement with the FTA proposed rule is the lack of a process by which a complainant may apply to FTA for a cease and desist order to stop a publicly funded transit agency from beginning an illegal charter. Allowing the opportunity to apply for a cease and desist order is important to the regulatory process.

This is so because private operators can be unaware that a publicly funded transit agency has taken a charter until just before the date of the charter. Allowing private operators to apply for a cease and desist order prior to the charter would prevent the operator from filing and the transit agency from responding to the full complaint, hearing, and appeals

⁷ 72 Fed. Register 7538 quoting 49 C.F.R. Part 604 (c).

⁸ 72 Fed. Register 7534 (February 15, 2007).

process. FTA's reluctance to propose a cease and desist process stems solely from the agency's estimation of the workload and human capital required to implement it.⁹

While we are mindful of the agency's budget constraints we feel that a cease and desist order process need not be, and should not be long and drawn out. An aggrieved private operator alleges harm, shows substantial likelihood of success on the merits of the case, demonstrates the public interest involved and the cease and desist order, if appropriate, is issued until the FTA can more fully adjudicate the underlying complaint. Reasonable limits can be placed on the process to prevent any harm that could result from a wrongfully issued cease and desist order or to prevent requests for such orders from inundating the FTA. We urge FTA to revise the proposed rule to add a cease and desist order process.

Conclusion

Thank you for the opportunity to submit these comments to the docket in this proceeding. The provision of charter services to the public is the heart of the private motorcoach and bus industry. Offering these services is the reason for my company's existence and provides the means by which I, my family and my company exist. Few things are more important to this company than this proposed rule. We urge FTA to modify the proposed rule as stated herein and to implement the revised rule as soon as possible.

Respectfully submitted:

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⁹ 72 Fed. Register 7531 (February 15, 2007).